

## **EXHIBIT D**

### **RESTRICTIVE COVENANT**

#### **HOLLY STREET LANDFILL**

**500 – 600 West Holly Street**

**Bellingham, WA 98225**

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by \_\_\_\_\_ *[NAME of property owner]* and its successors and assigns (“\_\_\_\_\_”) *[NAME]*, in favor of the State of Washington Department of Ecology and its successors and assigns (“Ecology”).

The property that is the subject of this Restrictive Covenant is the subject of remedial action under the Washington State Model Toxics Control Act (“MTCA”), Chapter 70.105D RCW, (“Remedial Action”) pursuant to a Consent Decree in the matter State of Washington, Department of Ecology v. City of Bellingham, et al., Cause No. \_\_\_\_\_ which was entered by the Whatcom County Superior Court on \_\_\_\_\_, 2002 (“Consent Decree”). The property is part of the larger Holly Street Landfill Site (the Site). The Site is defined in Exhibit B to the Consent Decree. The Remedial Action to be conducted pursuant to the Consent Decree at the property is described in the *Holly Street Landfill Final Cleanup Action Plan*, dated \_\_\_\_\_, (“Cleanup Action Plan”), which is Exhibit A to the Consent Decree and is located at Ecology’s Northwest Regional Office (NWRO) in Bellevue, Washington.

This Restrictive Covenant is required because the Remedial Action will result in the

containment of municipal type waste with residual concentrations of the following hazardous substances at the Site which exceed the MTCA unrestricted land use (e.g., residential) cleanup level for soil established under WAC 173-340-740: lead, arsenic, cadmium and carcinogenic polynuclear aromatic hydrocarbons (CPAHs). Further, certain geochemical oxidation processes acting within the immediate shoreline zones result in exceedances of surface water cleanup standards established under WAC 173-340-730 at the points of groundwater discharge into surface water. The extent of contamination and the Remedial Action to be conducted at the site are contained in the following Reports:

1. *Remedial Investigation/Feasibility Study, Holly Street Landfill Development Project Final Report – City of Bellingham*, by Anchor Environmental, LLC, \_\_\_\_\_ 2002. ***[citation will be to the final RI/FS to be adopted by DOE after public comment per Consent Decree]***
2. *Holly Street Landfill Final Cleanup Action Plan* (Exhibit A to the Consent Decree).

These documents are on file at Ecology's NWRO.

The undersigned, \_\_\_\_\_ *[NAME of property owner]*, is the fee owner of real property (hereafter "Property") in the City of Bellingham, State of Washington, which is subject to this Restrictive Covenant. The Property is part of the former Holly Street Landfill situated in the City of Bellingham, State of Washington, and is legally described in Attachment A, 'LEGAL DESCRIPTION'.

*[NAME of property owner]* makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest

in the Property (hereafter “Owner”).

Section 1. Future use of the Property shall be limited to those uses defined in and allowed under the City of Bellingham zoning and Shoreline Management regulations codified in the City of Bellingham Municipal Code as of the date of this Restrictive Covenant and as they may be amended from time to time. No groundwater may be withdrawn from the property for any use that is inconsistent with the remedial action implementation. The Property shall not be used for ground floor residential or day care center uses.

Section 2. Pursuant to the Cleanup Action Plan, Owner must maintain the integrity of the Remedial Action. Specifically, Owner must maintain two feet of soil cap or equivalent structural cover (e.g., building or two inch paving layer overlying ballast) over the Property. For building structures within the Maritime Heritage Park portion of the Site, Owner must conduct supplemental soil gas monitoring and/or use engineered passive gas venting systems as required under the Cleanup Action Plan and described in the *Compliance Monitoring and Contingency Response Plan*, which is Exhibit E to the Consent Decree. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited. These activities include those that may result in the release or exposure to the environment of the municipal type waste or contaminated soil, soil-gas and shoreline seepage that was contained as part of the Remedial Action, or that create an exposure pathway, unless such activities are authorized by the Cleanup Action Plan or this Restrictive Covenant. Where utility or other work at the Property requires excavation, Owner must comply with state and City standards, and must provide one foot of overexcavation or use geofabric lining to provide a clean perimeter around the excavation. All refuse materials excavated from the Property must be disposed off-site at a permitted solid waste disposal facility or contained on-

site below an engineered cap meeting the specifications outlined in the Cleanup Action Plan or subsequent Remedial Design (RD) documents (i.e., two feet of soil cap or equivalent structural cover). Personnel performing excavation at the Property should be familiar with the applicable health and safety training requirements, and should take the necessary precautions to minimize direct contact with municipal type waste and contaminated soils that are above state standards and are contained at the Site as part of the Remedial Action. Excavations conducted in accordance with the above conditions shall not constitute activities that interfere with the Remedial Action or continued protection of human health and the environment.

Section 3. Any activity on the Property that may interfere with the integrity of the Remedial Action, operation and maintenance, or monitoring and continued protection of human health and the environment is prohibited without prior written approval from Ecology, which approval shall not be unreasonably withheld. Details about the compliance monitoring requirements to ensure continued protection of human health and the environment are contained in EXHIBIT E of the Consent Decree.

Section 4. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any title or easement interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may

approve any inconsistent use only after public notice and comment. Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action. Ecology will provide Owner advance notice of its entry onto the Property when feasible.

Section 8. The Owner reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity to comment, concurs.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

BY: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

STATE OF WASHINGTON )  
 )  
 )ss.  
COUNTY OF WHATCOM )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of \_\_\_\_\_, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and action as said officer of the corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first  
above written.

Print Name: \_\_\_\_\_

Notary Public in and for the State of Washington,  
Residing at \_\_\_\_\_

My commission expires: \_\_\_\_\_